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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,966	01/28/2002	Krag C. Smith	269-101P-CIP	6702

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EXAMINER

FISCHER, JUSTIN R

ART UNIT PAPER NUMBER

1733

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

✓

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/055,966

Applicant(s)

SMITH ET AL.

Examiner

Justin R. Fischer

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1733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1,3,4 and 6-45.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

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Continuation of 11: Applicant initially argues that Miyazaki discloses a label to be applied to a tire and all example labels disclosed and shown in Miyazaki are relatively small in size. Applicant further contends that the reference actually teaches away from increasing the size of the labels.

First, the reference fails to expressly teach the size of the labels and it is unclear if the figures are “working drawings”. Second, the reference in no way teaches away from smaller or larger-sized labels as argued by applicant. As correctly pointed out by applicant, Miyazaki specifically desires a label that will not separate from the tire surface “by making the label with materials having elasticity or expandability/contractibility the same or greater than the material making up the tire”. This disclosure suggests that the reference is concerned with the materials used to form the label and not the actual size (cross-sectional area) of the label. Additionally, the reference specifically suggests that the label is formed with **“at least one of a picture pattern, a letter, a symbol, a photograph, a pattern, and a bar code”** (Abstract). The language “at least one of” clearly indicates that a plurality of labels can be used on a tire construction or a single label can be used with a plurality of designs, both of which suggest the ability to cover a large portion of the exposed tire.

Applicant further disagrees with the examiner’s position as pertains to the degree of coverage not pertaining to the mechanical function of the tire. It is emphasized that enhanced visibility and visual awareness are not related to the **“mechanical”** functioning of the tire- the degree to which the sidewall is covered does not change the mechanical function of the tire. For example, applicant argues that while the degree of

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coverage might affect the aesthetic characteristics of the tire, it also increases physical or mechanical functions of the tire (e.g. tire temperature or tire wear). In this instance, using a small or large label does not appear to result in different readings or measurements as pertains to tire temperature and/or tire wear.

Applicant contends that Miyazaki thoroughly discloses the problems with even relatively small prior art labels applied in the past, and the difficulties of applying and retaining even the relatively small labels (Page 12 of response). Applicant has not pointed to the portion of Miyazaki in which problems dealing with the size of labels are discussed and the examiner cannot find such a disclosure in Miyazaki.

Applicant argues that Miyazaki does not disclose applying a digital image to a tire. As detailed in the Final Rejection, one of ordinary skill in the art at the time of the invention would have recognized the language of Miyazaki (colored picture or photograph) as including digital images.

With respect to claims 7, 10-12, 14-17, and 19, applicant argues that the label of Miyazaki does not have raised elements. First, the ink that is applied to the base material layer (to form the display) has a certain thickness and such portions can be viewed as "raised portions". It is emphasized that the claim broadly requires the tire have "at least one raised pattern". Additionally, Miyazaki teaches that the display label 30 is applied to the side portion of the tire and has a certain thickness (Column 11, Lines 20+)- thus the display label as a whole can be viewed as being a raised portion since it extends from the side portion of the tire.

With respect to claims 8 and 9, the language “textured” or “sculptured” does not require any particular tire structure/arrangement. Any tire can be viewed as being “textured” or “sculptured” (formed by being placed in a mold).

As to claims 13 and 18, as noted above, camouflaging and pin stripping are specific forms of the designs broadly described by Miyazaki (Abstract). It is emphasized that the “mechanical functioning” of the tire does not change as a result of using a camouflage design, a pin stripe design, or any other design (the tire still operates in the same manner upon being mounted on a rim assembly).

With respect to claims 20, 27-29, 37, and 38, it is well recognized that the tread and sidewall are predominantly formed with the same color (e.g. black). However, it is also known to form the sidewall and tread from different colors, specifically when dealing with wear indicators. It is emphasized that the color of the outer surface of the tire represents an aesthetic effect that is different from that of the display label of Miyazaki. One of ordinary skill in the art at the time of the invention would have recognized the ability to include the display label of Miyazaki on any tire construction, such as one having a red tread and a black sidewall or one having a blue tread and a red sidewall or one having a black tread and a black sidewall- the invention of Miyazaki is independent of the color of the tread and/or sidewall of the tire.

As to claims 31-34, color coordinating does not change the “mechanical functioning” of the tire- the tire, upon being mounted on a rim, physically operates in the same manner if it matches the color of the car or if it doesn’t match the color.

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Regarding claims 35, 36, and 39-41, tires are predominantly formed with a formulation that remains substantially uniform throughout the depth of the tire (e.g. black). Additionally, such tires have been formed in which the formulations are colors other than black, for example red or blue. The general concept of forming a tire with a substantially uniform color throughout the depth is extremely well known in the tire industry. It is emphasized that the use a single colored formulation throughout the depth of the tire represents an aesthetic effect that is different from that of the display label of Miyazaki. One of ordinary skill in the art at the time of the invention would have recognized the ability to include the display label of Miyazaki on any tire construction, such as one having an entirely black formulation or an entirely red formulation- the invention of Miyazaki is independent of the color throughout the depth of the tire.

As to claims 21, 24, and 26, applicant argues that neither Ono or Rogal disclose an outer tire surface being configured to change color with time. The examiner respectfully disagrees. The references specifically include materials that change color to provide indicate, for example, the temperature of the tire. It is emphasized that the display label of Miyazaki can be used on any known tire construction and the use of color changing pigments, primarily to indicate temperature, are known in the tire industry. The use of a display label is an aesthetic design that is separate and independent from the use of color changing pigments or compositions in the outer surface of a tire.

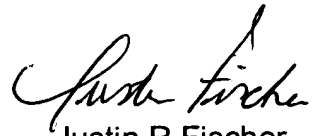
With respect to claim 42, the label of Ono, upon being attached/molded to the tire, is part of the tire.

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As to claim 43, the change in vehicle speed would be accompanied with a change in vehicle pressure.

Regarding claim 45, a pattern that becomes visible when a certain speed is achieved is seen to constitute a change in color (if there was no change in color then the pattern would not become visible).

With respect to claims 22 and 25, it is emphasized that the display label of Miyazaki is applicable to any known tire construction, including those in which the outer surface of the tire changes color over time. Porto provides one example of such a known tire construction. Again, the color of the outer portion of the tire and the display label are separate aesthetic arrangements that can be used individually or in combination.


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JRF
November 14, 2006